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Commonwealth Department of Climate Change, Energy, the Environment and Water

Via survey <https://consult.dcceew.gov.au/natl-environmental-standards-mnes>

### **Draft Submission on National Environmental Standards for Matters of National Environmental Significance and Environmental Offsets**

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to comment on the National Environmental Standards for Matters of National Environmental Significance (MNES) and Environmental Offsets. Local government plays an important role in protecting nature, including through:

- Maintaining parklands, reserves, protected areas, and some areas of Crown land,
- Setting and regulating restrictions in land use planning and vegetation removal and acting as a regulatory authority for pollution and contamination,
- Protecting ecosystems from threatening processes such as pests and weeds and responding to biosecurity emergencies,
- Educating and involving communities in nature and sustainability, including bush care, community events and communication programs,
- Delivering waste services, including food and garden organics processing, and supporting residents to adopt circular economy practices,
- Improving the sustainability of councils' own facilities, including using nature-based solutions for climate change adaptation.

This is a draft submission and is subject to review and approval of the LGNSW Board. Any changes will be advised at the earliest opportunity.

#### **Background**

Reforms to the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, including the introduction of National Environmental Standards was recommended by the Samuel Review<sup>1</sup>.

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<sup>1</sup> Professor Graeme Samuel AC (2020) [Independent Review of the EPBC Act – Final Report](#)

The Australian Government's Environment Protection Reform Bills were passed by the Australian Parliament on Friday 28 November 2025.

## Response

The introduction of the Standards is welcome as they provide high-level frameworks that support interpretation and implementation of the updated EPBC Act. However, the usability and effectiveness of the standards could be improved:

- In relation to offsetting - by including much more specific guidance on matters such as determining the quantum of offset required and interpretation of like for like;
- in relation to MNES - by providing further guidance on the matters to be considered in the assessment of impacts on MNES, and for determining impacts and whether they are 'unacceptable' and/or 'significant'.

Specific comments are provided below. In addition, local government is an important delivery partner in achieving outcomes and this should be recognised in the standards.

## National Environmental Standard for Matters of National Environmental Significance

### *Draft MNES Standard*

Section 5 Objectives (1) includes the words "where necessary", which is ambiguous and requires clarification to explain under what circumstances this will be applied.

Section 5 Objectives (2) should also include the supporting ecological systems that are required to maintain protected matters.

Section 8 Principles 1 - refers to 'appropriately considering' and 'having regard' to the mitigation hierarchy, requirements which could be strengthened. Proponents should be required to demonstrate how they have *applied* the mitigation hierarchy.

Section 9 Principle 2 - In considering impacts on protected matters, the standard should require application of the precautionary principle.

Section 9 Principle 4 currently notes that actions "should be supported by appropriate and suitable (a) data and information". Appropriate and suitable data should include ecological surveys, and evidence supporting actions must explicitly include what information is not known or inconclusive.

An additional principle for protected matters should be to refer to and apply relevant land use and conservation plans, standards or guidelines (Commonwealth, State, regional and local government) where these apply to the protected matter.

## National Environmental Standard for Environmental Offsets

### *Mitigation hierarchy*

The introduction of the mitigation hierarchy is welcome as councils have often noted that many proponents seek to clear and offset, instead of first minimising biodiversity impacts. However, the hierarchy contains an additional step, 'repair', compared to the same hierarchy in NSW legislation, which may be confusing for proponents and other users. If state governments do not adopt the same language, it will be important that guidance is created explaining the shared meanings and differences between the hierarchies in state and national legislation. This will be particularly critical for enabling the development of bilateral agreements (between states and the federal government) for assessment and approvals.

Guidance will also be needed to clearly explain what constitutes genuine measures to avoid, minimise and repair biodiversity. This could include:

- Locating the development within existing disturbed or developed areas. This may require a configuration of the design or a reduction in the footprint of the development.
- Where permissible, opt for increasing the height of the proposed development rather than expanding the development footprint if an increased footprint is likely to impact natural values.
- Designing and locating the development to minimise the need for substantial excavation or ground disturbance.
- Avoid area mapped under the Biodiversity Values map, avoid Coastal wetlands and Littoral Rainforest, avoid Threatened Ecological Communities (TECs), avoid hollow bearing trees and threatened species.
- Avoided areas should focus on areas that are of highest biodiversity value, not lowest development potential.
- Where safe, retain dead trees with hollows or cavities as they provide vital habitat for native fauna, including many threatened species.
- Identify and mark off 'no go' areas on the site where native vegetation or other wildlife habitat will be protected during construction and after the development.
- Complying with the landscaping, open space and setback requirements that apply to your property.
- In bushfire prone land, ensuring that potential Asset Protection Zones (APZs) and 10/50 vegetation clearing entitlements are considered, and that buildings are designed and located to minimise the impacts of these.
- A genuine measure could include whether the development proposed is appropriate for the land type and ecological constraints e.g. proposing a Special Fire Protection Purpose development on land containing and surrounded by bushland areas may not be considered consistent with genuine efforts to avoid and minimise impacts.
- Economic feasibility considerations are important but should not be misused. Councils often hear the argument that a project is unfeasible if any vegetation is retained on the site.

### *Offset contribution payments*

The Standard refers to the ability to discharge residual offset compensation obligations through offset contribution payments, which will be supported by establishing a special account and statutory office holder. This provision may give rise to the same issues that currently occur under the NSW system. In NSW, many proponents pay into the Biodiversity Conservation Fund (BCF) so that the Biodiversity Conservation Trust is then tasked with sourcing and retiring the offset credits (that is, to remove credits from the market so they can no longer be traded). Paying into the BCF is seen as a quicker and simpler process than seeking to retire credits themselves. This results in local and species-specific biodiversity losses as the BCF payments do not need to be linked to the same location or species and there is a lack of transparency around what BCF payments are being spent on. There is also a significant time lag between when the clearing and biodiversity loss occurs, and when the BCF restoration actions are made.

It is important these issues are avoided in the national system through greater disincentives and restrictions on its use, for example for critically endangered entities and species with small distributions. A list of species should be published and regularly updated for which obligations cannot be met through contribution payments, including because like-for-like biodiversity gains cannot currently be identified and achieved. There should also be a significant cost uplift/surcharge to account for the biodiversity time lag and to avoid it becoming the default option, as well as greater transparency and accountability on how and when the funding is spent.

### *Definitions*

Several definitions could be expanded and improved to reduce ambiguity:

- The definition of 'offset' i.e. 'measures to compensate to a gain for residual significant impacts to protected matters', could be phrased more clearly.
- The definition of 'residual significant impact' should be expanded to explain what is meant by a 'significant' impact.
- The definition of 'conservation planning documents' as "statutory plan or policy that supports the protection, conservation, recovery, and/or maintenance of a protected matter, that is made under the EPBC Act or endorsed or accredited by the Minister" should be broadened to include relevant land use and conservation plans, standards or guidelines at local, regional, state and national level.

### *Principle 1: Feasibility*

The Standard provides that "the delivery of offsets activities should be feasible and based on appropriate and suitable data and information which shows, with a high degree of certainty, that the offset activity will likely contribute to the recovery or conservation of the affected protected matter"

The combination of 'a high degree of certainty' with 'will *likely* contribute' is incongruent and undermines the concept of offsetting. 'Likely' should be deleted and 'high degree' should be defined.

*Principle 7: Relevant area*

The ability for offsets to be located within the same bioregion as the impact is a concern for councils as many local government areas are experiencing a loss in local biodiversity due to offsetting occurring elsewhere. This is a particular issue in urban and coastal areas because there is high development pressure and offsetting can be retired in less costly locations. This makes it difficult for councils to successfully manage the habitat and populations of threatened species, and it could result in the local extinction of species. Councils would welcome the scale being reduced to an Interim Biogeographic Regionalisation for Australia subregion, as opposed to a bioregion.

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Thank you again for the opportunity to comment on the National Environmental Standards. Local government would welcome the opportunity to comment on additional changes relating to the reform of the EPBC Act.

If you would like further information on LGNSW's position, please contact Susy Cenedese, Strategy Manager Environment on 02 9242 4080 or [Susy.Cenedese@lgnsw.org.au](mailto:Susy.Cenedese@lgnsw.org.au).

Yours sincerely



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